

PS 1440.01 EMERGENCY ASSISTANCE/NON-FEDERAL CORRECTIONAL SYSTEMS



Program Statement

OPI: CPD
NUMBER: 1440.01
DATE: May 18, 1994
SUBJECT: Emergency Assistance to
Non-Federal Correctional Systems

1. PURPOSE AND SCOPE. To provide guidelines under which the Bureau of Prisons may provide emergency assistance to non-Federal correctional systems. Such assistance may be provided only under the guidelines set forth in this policy and only following a determination that such assistance is needed to protect the public safety or to enforce the criminal law.

2. DIRECTIVES AFFECTED

a. Directives Rescinded. None.

b. Directives Referenced

P.S. 5500.05 Correctional Services Manual (06/01/93)
P.S. 5558.08 Firearms and Badges (01/15/88)
P.S. 5566.03 Restraints, Use of Force on Inmates
(05/15/89)

3. STANDARDS REFERENCED. None.

4. BACKGROUND. The Bureau, on occasion, may be called upon by, or may call upon other Federal, State or local agencies to provide supportive assistance. For example, during the 1987 disturbances at Oakdale and Atlanta, the Bureau of Prisons received assistance from the Federal Bureau of Investigation, the Department of Defense and many local law enforcement agencies.

Bureau assistance to other Federal components is ordinarily limited to providing detention consultation and/or assistance. Other assistance may be considered based on the Bureau's statutory authority and expertise in the requested area and/or the Federal agencies' authority to empower the Bureau (e.g., deputize) to provide the assistance.

With respect to non-Federal entities, Federal and State governments often enter contractual agreements where one or the other houses inmates from outside their system (18 U.S.C. 5003). Similarly, the Bureau "lends" its Executives to various State

systems on a temporary basis through the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4721). Through its own statutory mandate and through the National Institute of Corrections, the Bureau provides assistance to non-Federal entities (18 U.S.C. 4042, 4352). Additionally, the Emergency Federal Law Enforcement Assistance Program (28 CFR 65) provides for Federal assistance to States in emergencies, upon approval of the Attorney General.

5. DEFINITION. For the purposes of this Program Statement, the following definition applies:

Law Enforcement Emergency means an unusual situation which requires law enforcement intervention, and which is, or which threatens to be of serious proportions, and State and local resources are inadequate to protect the lives and property of citizens or to enforce the criminal law in a situation identified as requiring prompt action.

Examples of this include natural and man-made disasters.

6. MEMORANDUM OF UNDERSTANDING. Direct emergency assistance to non-Federal correctional systems ordinarily is limited to those systems with which the Bureau has entered a Memorandum of Understanding (MOU). Memoranda of Understanding entered into with local, county and State correctional entities shall address the issue of State, as well as Federal, assistance. Absent a MOU, the Bureau ordinarily will not provide emergency law enforcement assistance to non-Federal correctional entities.

An exception to this policy may be made when the non-Federal correctional entity has exhausted its available resources, when those resources that are available are inadequate to protect the lives and property of citizens, and when the needed assistance (e.g., from the State or other localities) cannot otherwise be obtained in a timely fashion. In such instances, the Bureau may provide emergency supportive assistance as set forth in this Program Statement. In general, the types of assistance that may be given without a Memorandum of Understanding in effect should correlate to the typical modes of assistance set forth in Section 8 of this Program Statement.

The intent of the MOU is to allow the institution to be able to respond very quickly to many types of emergency situations, by developing authorization procedures for basic Federal assistance at the local level, while allowing for even greater assistance, if needed, with higher level approval.

a. Scope. Bureau institutions, as specified by the Correctional Services Manual, have included State, county, and local resources in its institution contingency planning and overall emergency preparedness plans. These plans may include agreements with local non-Federal agencies for specific assistance. In keeping with such interagency cooperative

arrangements, the Bureau may provide similar emergency assistance to non-Federal correctional entities. The scope of such assistance shall be set forth in a MOU entered into by the institution Warden and the authorized non-Federal correctional entity.

b. Preparation. The Warden of each institution may prepare a MOU when it is determined to be appropriate. Factors to consider in making this determination include, but are not limited to, the type and number of non-Federal correctional systems within the immediate area, and the availability of non-Federal resources to meet the emergency non-law-enforcement need. The purpose of the MOU is to try to anticipate emergencies that might arise and to detail in advance what type of assistance the institution would provide if such assistance were requested. The MOU must specify who in the non-Federal correctional entity is authorized to make such a request and the local Bureau limits on authorizing varying degrees of assistance.

c. Requests for Assistance. Ordinarily, an outside request for assistance should come from a high level State authority and be approved only by the Bureau Warden or Acting Warden, in consultation with the Regional Director. The MOU must require approval by the appropriate Regional Director and the Assistant Director, Correctional Programs Division, before certain assistance may be provided. When this is not practicable, the Regional Director and the Assistant Director, Correctional Programs Division, shall be notified as soon thereafter as possible of both the steps requested and response made.

The MOU must contain a statement that Bureau staff may not use weapons, ammunition, or chemical agents to provide assistance, except as authorized by the Deputy Attorney General, or the Director in extraordinary circumstances (for further discussion on this point see Section 8.d. below).

d. MOU Preparation Guidelines. The following guidelines must be considered in any MOU:

(1) The assistance required must be immediate, short-term and limited to operations which Bureau staff are authorized to provide, and for which they are trained and have expertise, such as, detention and transportation of persons duly detained by the non-Federal authority.

(2) The MOU must provide for financial reimbursement of resources (including personnel employed beyond the initial response time) expended and/or damaged.

(3) Bureau assistance may not extend into operations such as crowd control for general public safety projects or for the enforcement of laws associated with scheduled public events. The basis for this limitation is the Bureau's statutory boundaries

and that its scope of expertise is correctional management issues.

(4) Bureau staff ordinarily are not expected to become involved in any situation requiring the use of force. When a particular situation necessitates the use of force (e.g., for self protection), the force used may not be beyond that specified within the Bureau's own policies.

7. REVIEW BY/NOTIFICATION OF REGIONAL DIRECTOR AND ASSISTANT DIRECTOR

a. Review. While the Warden is the signatory authority for a MOU, in every instance prior review and approval of the Memorandum by the respective Regional Counsel, Regional Director and the Assistant Director, Correctional Programs Division is required. In conducting this review, the Regional Counsel shall consider the provisions of applicable State law.

b. Notification. Even in instances when prior approval by a Regional Director is not required for some action under the MOU, the Warden (or designee such as Duty Officer) shall as soon as practical provide the Regional Director (or designee such as Regional Duty Officer) with a detailed description of any assistance provided.

8. TYPICAL ASSISTANCE AND GUIDELINES. The following typical types of assistance may be considered for inclusion in a MOU:1

a. Emergency Transportation. Bureau secure buses, ambulances, and vans, driven by trained Bureau staff, may be used to transport prisoners who are in custody of the State correctional entity. The State agency must provide sufficient staff on board to maintain security and good order. In this situation, the Bureau is not considered to have assumed custody of the inmates.

b. Detention. The Bureau may take into custody for detention inmates being held for trial, or who are convicted of criminal offenses, in the State courts and who are duly detained by the State correctional entity. Such prisoners may be accepted for detention in a Bureau bus (for expedited transportation to another facility) or in a Bureau institution. Detention in a bus differs from just providing transportation in that the prisoner is actually transferred into temporary Bureau custody and is subsequently supervised by Bureau staff. Such transfer of prisoners into Bureau custody requires the existence of a contract calling for the Bureau to assume custody of State offenders (see 18 U.S.C. 5003).

It is suggested that the MOU incorporate, to the extent practicable, the relevant provisions of this statute. When feasible, a contract should be considered as an appendix to the MOU, providing for any individuals who might need to be

temporarily placed in the custody of the Bureau. Absent such a contract, the Bureau may not assume custody of State inmates without the appropriate Regional Director's prior approval.

c. Logistical Support. The Bureau may provide emergency supplies, such as blankets, clothing, food, and similar items when necessary to protect the safety and health of others. Clothing marked with the Bureau insignia may not be loaned to, or worn by any non-Bureau employee. Equipment, such as fire trucks, vehicles, machinery, and generators, may be provided but shall ordinarily be operated by Bureau staff, or by non-Bureau staff only when the non-Federal correctional authority has indicated that its staff is competent to use such equipment. The use of such equipment shall be provided only until the emergency situation is controlled, and the public safety is no longer endangered.

d. Weapons, Ammunition, and Chemical Agents. The Bureau may provide these items to the non-Federal correctional entity when the non-Federal correctional authority has indicated that its staff are competent to use such weapons, ammunition, and chemical agents. This information shall be specified within the MOU. In the absence of the MOU, weapons, ammunition and chemical agents may be provided only with prior approval of the Assistant Director, Correctional Programs Division.

Bureau staff may not use weapons, ammunition, or chemical agents to provide assistance to non-Federal correctional entities. If a non-Federal correctional entity requests that Bureau staff use weapons, ammunition, or chemical agents, in response to a specific emergency, Bureau staff may do so only with the approval of the Deputy Attorney General, unless the Director personally concludes that the delay to obtain such approval would likely result in death or serious bodily injury to employees of, or inmate hostages in, non-Federal correctional entities, or to Bureau employees. In such instances the Director may authorize the use of such devices and shall make a full report to the Deputy Attorney General as soon as possible.

e. Perimeter Security. Bureau arrest authority is limited by the provisions of 18 U.S.C. 3050 to making arrests for Federal crimes, although the laws of some States may authorize Bureau personnel to make arrests for State crimes. In States where Bureau personnel have this authority, the MOU may provide for their providing perimeter security at a non-Federal institution in situations when the non-Federal staff are not able to provide perimeter coverage. The MOU shall also make it clear that "perimeter coverage" by Bureau personnel involves only dealing with inmates, not members of the public or the media. Non-Federal personnel are responsible for handling the media and the public during disturbances at non-Federal institutions.

In States where Bureau personnel do not have authority to make arrests for State crimes, the MOU may provide for Bureau staff to perform other functions, including routine duties inside or outside a non-Federal correctional institution, thereby freeing some non-Federal correctional staff for primary (e.g., perimeter) coverage.

f. Escape Hunts. Based on its limited arrest authority, the Bureau may not assist in searches for felony offenders who have escaped from non-Federal correctional custody. Bureau staff may however conduct searches on Federal penal property. In other situations, Bureau staff may assume other duties as set forth in this Program Statement, thereby freeing up additional State or local correctional staff to participate in tracking an escapee.

g. Medical Support. Bureau qualified health personnel may provide medical support within their respective areas of health care training or experience. Such support may also include use of medical equipment and supplies.

h. Hostage Negotiation. The Bureau may provide trained hostage negotiators, but their activities are ordinarily to be limited to background consultations, rather than direct negotiations with prisoners. Any decision to authorize Bureau hostage negotiators to actually conduct negotiations must be made at no lower than the Regional Director level.

i. Food Service Support. Bureau personnel may provide food service support. Such support may also include the use of food supplies and equipment.

9. SPECIAL OPERATIONS RESPONSE TEAMS. The Bureau may provide trained Special Operations Response Teams (SORTs) to respond to non-Federal correctional emergencies. Prior to the deployment of any SORT team in active law enforcement, the authorization of the Attorney General of the United States is required. Such authorization is to be obtained through the Regional Director, Director, and Deputy Attorney General.

10. SUPPORT ASSISTANCE BY OTHER FEDERAL AGENCIES. It is possible for other components of the Federal law enforcement community to become involved in resolving non-Federal correctional emergencies. When this occurs, and when that Federal component has the legal authority to deputize others, Bureau staff may be so deputized. Their authority in such situations is limited to the scope of authority exercised by the empowering agency. When practicable, the Assistant Director, Correctional Programs Division, is to be contacted for approval prior to Bureau staff being deputized. When not practicable, this notification shall occur as soon thereafter as possible.

11. REPORTING REQUIREMENTS. The Warden shall immediately notify the Regional Director, Assistant Director, Correctional Programs Division, and Director of all requests for emergency law enforcement assistance from a non-Federal correctional entity. If practicable, this notification shall be made prior to the assistance being given, and, if not, as soon thereafter as possible.

Upon receipt of this notification and in conjunction with the approval of any request for emergency law enforcement assistance to a non-Federal correctional entity, notification shall immediately be provided to the Deputy Attorney General, Department of Justice. When practicable, this notification shall occur prior to the assistance being provided. When this is not practicable, such notification shall occur immediately thereafter.

As soon after notification as practicable, the Warden must document in writing the request for assistance under the MOU. When assistance is provided, a written report of incident (BP-583) must be prepared and submitted to the specified individuals. This report shall describe the nature of the emergency request that prompted the assistance, the assistance provided, the results (or tentative results) of the assistance, the expenditures made, any injuries sustained, and other relevant information.

12. ANNUAL REVIEW OF MEMORANDUM OF UNDERSTANDING. The Warden shall ensure that each MOU is reviewed each November, as part of the contingency plans review, to assess its continued applicability. The results of this review shall be provided to the Regional Director, with a copy to the Regional Counsel.

13. ASSISTANCE. Questions concerning the provisions of this directive may be directed to the appropriate Regional Counsel and Regional Correctional Services Administrator.

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Kathleen M. Hawk
Director